virtue of a replevin suit, it developed that S was not owner of all the broom corn. The railroad then claimed the right to charge less-than-carload rates. *Held,* that the carrier has no right to make the ownership of the goods the test by which freight charges were to be determined. *St. Louis & S. F. R. Co.* v. *First Nat. Bank of Elk City et al.,* (Okla. 1918) 171 Pac. 467.

The early decisions are to the effect that the carrier need not give the same carload rate to forwarding companies who collected parcels from many shippers to make a carload with the intention of getting the lower rate, *Lundquist* v. *Grand Trunk Western R. Co.,* 121 Fed. 915; *Johnson* v. *Dominion Ex. Co.,* 28 Ont. 203. See also *D. R. Martin,* 11 Blatch (U. S.) 233 and *Barney* v. *Oyster Bay & H. S. Co.,* 67 N. Y. 301, to the effect that a passenger cannot use the facilities of the carrier to further his own interests. The reasoning of these cases is to the effect that a common carrier does not hold itself out to carry for a competitor. This doctrine was modified in *Buckeye Buggy Co.* v. *Cleveland, C. C. & St. L. Ry.,* 9 I. C. C. Rep. 620 where it was decided that if the consignee is the owner of the goods then he would be entitled to the carload rates although the car load was made up of shipments from various vendors. And, finally, in *Int. Com. Com.* v. *Delaware, L. & W. R. R.,* 220 U. S. 235, the older decisions were overruled, the supreme court holding that the carrier could not discriminate in fixing charges because of ownership of goods tendered for transportation. It was this decision which bound the court in the instant case. And the decision is in accord with the English cases interpreting an act from which the United States act was taken, *Tex. & Pac. Ry.* v. *Int. Com. Com.,* 162 U. S. 197, 222; *Great Western R. Co.* v. *Sutton,* (1869) L. R. 4 H. L. 226. And the rule of *Int. Com. Com.* v. *Delaware, L. & W. R. R.* (*supra*), that railroads cannot discriminate on account of title, has been applied both ways, so that a shipper is bound by a limitation which the forwarding agent may make and must look to the forwarding agent if instructions are not obeyed, *Great N. Ry. Co.* v. *O'Connor,* 232 U. S. 508.

CONSTITUTIONAL LAW — ATTORNEY FEES — EQUAL PROTECTION OF THE LAW.—The revised code of Montana allows an attorney fee of a reasonable amount, as fixed by the court, to the successful plaintiff, who sues a railroad for cattle killed, either on the ground of absolute liability, because of failure to construct or maintain fences or cattle guards, or because of the negligent operation of trains. The plaintiff herein appealed from a judgment in his favor and sought to have reviewed an order of the trial court striking from his cost bill an item of fifty (50) dollars as an attorney fee. *Held,* the above section allowing attorney fees to the successful plaintiff is unconstitutional as denying the equal protection of the laws. *Dewell* v. *Northern Pac. Ry. Co.* (Mont. 1918), 170 Pac. 753.

The court *held* that, since the above provision as to attorney fees applies as well to an action brought for damages for animals killed by the negligent operation of trains as to an action brought for damages arising from a failure to build or maintain fences or cattle guards, it was uncon-

stitutional. The police power of the state extends only to such measures as are reasonable and the general rule is that all police regulations must be reasonable under all circumstances, *Missouri & N. A. R. Co.* v. *State,* 92 Ark. 1. At common law owners were under no duty to fence their lands against the cattle of their neighbors 12 AM. ENG. ENC. OF LAW, 1039. But, owing to the danger to persons and property being transported on the railway from collisions of the train with trespassing animals and danger to the animals themselves, statutes have been passed requiring railroad companies to fence their tracks and to maintain cattle guards at openings. Such statutes are held constitutional, authority for enacting them being found in the general police power of the state to provide against accidents to life and property in any business and employment. *Missouri P. R. Co.* v. *Humes,* 115 U. S. 512; *Minneapolis & St. L. R. Co.* v. *Beckwith,* 129 U. S. 26. In order to enforce the duty to fence, the legislature may prescribe appropriate fines and penalties and what disposition shall be made of the amounts collected are mere matters of legislative discretion. *New Albany & S. R. Co.* v. *Tilton,* 12 Ind. 3. A provision, that an attorney fee may be recovered from a company, which has neglected the statutory duty to fence, by one whose stock has been killed, is held constitutional by the weight of authority though a like fee is not given to the railroad if successful, *Peoria D. & E. R. Co. v. Duggan,* 109 Ill. 537; *Atchison & N. R. Co.* v. *Harper,* 19 Kan. 529. In order then to sustain a statute allowing an attorney's fee to the successful plaintiff the statute must have been a valid exercise of the police power of the state. Clearly the same dangers exist to persons and property being transported on the railway from collisions of the train with trespassing animals once they are on the track whether the track is fenced or not. What the legislature is seeking is the ultimate protection and safety of persons and property from the dangers which naturally result from the swift movement of trains. Requiring tracks to be fenced in is one step toward securing that safety, requiring cattle guards is another and demanding a greater degree of care from trainmen in regard to discovery of cattle that might have strayed upon the track is still another step toward the ultimate object. There certainly is more danger to persons and property from the negligent killing of cattle on a railroad than from the negligent killing of cattle on a highway and there is likewise much more danger that cattle will be killed because of the negligent operation of a railroad than could possibly result from the negligence of persons on a highway. This difference certainly justifies a difference in classification and should be sufficient to sustain such a statute as is found in the principal case as a valid exercise of the police power. But a statute allowing a successful plaintiff to tax an attorney's fee as part of his costs in an action against a railroad company to recover for the killing of cattle has been *held* unconstitutional as a discrimination between litigants. *Wilder* v. *Chicago & W. M. R. Co.,* 70 Mich. 382; *Lafferty* v. *Chicago & W. M. R. Co.,* 71 Mich. 35. In *Gulf C. & S. F. R. Co.* v. *Ellis,* 165 U. S. 150 a statute allowing such attorney fees in actions upon certain classes of claims upon railroad companies, was held invalid because it discriminated against one class of debt-

ors, the railroad companies. But the United States Supreme Court in considering a Kansas Statute that allowed a reasonable attorney fee to a successful plaintiff in an action against a railriad company for damages from fire caused by operating the railroad upheld the statute as being in the nature of a police regulation. *Atchison, T. & S. F. R. Co.* v. *Matthews,* 174 U. S. 96.

CONSTITUTIONAL LAW — MECHANICS LIEN STATUTE — ALLOWING ATTORNEY'S FEES.—Where plaintiff in recovering a judgment claimed the benefit of a Florida statute which provides that the plaintiff in a suit to enforce a mechanic's or material-man's lien, if successful, shall recover an attorney's fee, regardless of whether or not he recovers the amount sued for, *held,* such statute is unconstitutional as denying to defendants in such suits the equal protection of the laws. *Union Terminal Co.* v. *Turner Constr. Co.,* (C. C. A., 5th Circ.) 247 Fed. 727.

The United States Supreme Court in *Missouri, K. & T. R. Co.* v. *Cade,* 233 U. S. 642, has recently upheld the provision of a Texas statute for the allowance of a reasonable attorney's fee of not over $20 to the successful plaintiff in a suit in which an attorney is actually employed upon a claim not exceeding $200, against any corporation or person, for various sorts of claims, where the recovery is for the full amount claimed, this statute making no classification of debtors and not appearing to have been made for purpose of bearing against any class of citizens. But a classification of debtors may be made if there is some reasonable basis for the classification. Thus attorney's fees have been allowed against railway companies for damages from fire caused by operating the railroad; the provision being in the nature of a police regulation. *Atchison T. & S. Ry. Co.* v. *Matthews,* 174 U. S. 96. In *Seaboard Air Line Ry. Co.* v. *Seegers,* 207 U. S. 73 an attorney's fee was allowed against a railway for the purpose of securing the prompt payment of small claims on the ground that the matter for adjustment is peculiarly one within the knowledge of the carrier which can determine the amount of the loss more accurately and promptly than anyone else. But the amount recovered must be the amount claimed. *St. Louis; I. M. & S. Ry. Co.* v. *Wynne,* 224 U. S. 354; *Seaboard Air Line R. Co.* v. *Seegers* (*supra*). It has been held to the contrary. *Mobile & Ohio R. Co.* v. *Brandon,* 98 Miss. 461. A state statute allowing attorney's fees against insurance companies which fail to make prompt payment of claims has been upheld. *Pacific Mutual Life Ins. Co.* v. *Carter,* 92 Ark. 378. In several jurisdictions the courts have *held* invalid statutes allowing attorney's fees to successful plaintiffs in suits to foreclose mechanics' liens. *Randolph* v. *Builders & Painters Supply Co.,* 106 Ala. 501; *Mannix* v. *Tryon,* 152 Cal. 31; *Davidson* v. *Jennings,* 27 Colo. 187; *Atkinson* v. *Woodmansee,* 68 Kan. 71; *Brubaker* v. *Bennett,* 19 Utah 401. On the contrary such provisions have been held valid in *Gray* v. *New Mexico P. Stone Co.,* 15 N. M. 478; *Title Guarantee Co.* v. *Wrenn,* 35 Or. 62; and in numerous other jurisdictions. The question has not come up directly before the Supreme Court of the United States, nor has it been passed upon in any other Federal Court. The Court